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STATE OF CALIFORNIA

Fish and Game Commission

May 27, 2011

To All Interested and Affected Parties,

This is to provide you with a copy of the notice of proposed regulatory action relative to Subsection 7.50(b)(1.5) – “Alameda Creek”, and Sections 2.10 – “Hook and Weight Restrictions”, 27.65 – “Filleting of Fish on Vessels”, and 29.80 – “Gear Restrictions”, Title 14, California Code of Regulations, relating to Sport Fishing Regulations, which will be published in the California Regulatory Notice Register on May 27, 2011.

Associated documents will also be published to the Fish and Game Commission website at <http://www.fgc.ca.gov/regulations/new/2011/proposedregs11.asp>.

Please note, on page three of the attachment, the dates of the public hearings related to this matter and associated deadlines for receipt of written comments.

Mr. Scott Barrow, Fisheries Program Branch, Department of Fish and Game, phone (916) 544-7600, has been designated to respond to questions on the substance of the proposed regulations.

Sincerely,

Jon D. Snellstrom
Associate Governmental Program Analyst

Attachment

TITLE 14. Fish and Game Commission Notice of Proposed Changes in Regulations

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 200, 202, 205, 215, 220, 240, 315 and 316.5 of the Fish and Game Code and to implement, interpret or make specific sections 200, 202, 205, 206, 215, 220, 316.5, 5508 and 5509, of said Code, proposes to amend Sections 2.10, 7.50(b)(1.5), 27.65 and 29.80, Title 14, California Code of Regulations, relating to sport fishing regulations.

Informative Digest/Policy Statement Overview

Section 2.10 Hook and Weight Restrictions

Under current regulation Section 2.10(b)(2) of Title 14, CCR states "It is unlawful to use any hook which is directly or indirectly attached closer than 18 inches to any weight exceeding ½ ounce."

In the section of the San Joaquin River from State Highway 140 in Merced County downstream to Airport Way Road in San Joaquin County, there is an annual problem with the illegal take of White Sturgeon. The illegal method of take deals with anglers taking spawning sturgeon by impaling the fish with large hooks. The method of take is commonly referred to as snagging. The snagging activity occurs when the White Sturgeon migrate up the San Joaquin River between February to May of each year. The San Joaquin River located between State Highways 140 to Airport Way Road is shallow, narrow and slow moving. As a result of this, sturgeon is easy prey for illegal take. Restricting the type of gear used in this area will allow for legal and routine fishing while eliminating the techniques that are typically used to illegally take the sturgeon. The preferred method of take by a select group of anglers involves the use of excessively heavy weights and maximum hook sizes. The weight used by these anglers is typically 8 oz. to 1½ pounds in weight. It may vary in a small range by the depth and speed of the river. It must be stressed that the San Joaquin River is very narrow in this area. In much of the area, it is less than twenty-five yards wide. The weight is attached to the bottom of heavy line such as 200-pound test double braided fishing line. Located above the weight there are up to three hooks, indirectly and or directly attached to the line. The methodology in using this equipment requires the angler to closely attend their line. The fishing line is maintained in a very taut manner where the line has no bow or slack. This is why the weight must be so heavy. Moreover, because the river is so shallow, the line passes through the river at a very shallow angle, allowing the majority width of the river to have a line strung across it. As a sturgeon swims past the line, the fish will bump or scrape along the fishing line. Once the angler feels the bump on the taut line, they will pull back violently on the line and then run up the bank of the river dragging the weight and hooks through the water. The weight keeps the line and hooks firmly against the side, back or belly of the sturgeon. The hooks eventually travel to the body of the sturgeon and penetrate deeply into the fish. Since the fish has not voluntarily taken the hook by mouth, it is an illegally taken fish and must be released. Even if released, which the majority are not, the fish now has a deep gash in the body from the large hook. Unfortunately, many of the anglers using this technique fish in this section of the San Joaquin River for days and weeks at a time when the White Surgeon area moving up river to spawn. Closing the river would not deter the take of the sturgeon. In addition, it would restrict and eliminate the ability of otherwise lawful angling activity. By placing a gear restriction on this section of the river, it would eliminate the use of the heavy weights and large hook technique described above, yet allow for legal angling activity in the area. The proposed regulation change would help eliminate this type of angling activity and prevent numerous sturgeon from being snagged in this illegal manner. Sturgeon report cards turned into the Department have shown that there has been green sturgeon caught in this general area of the San Joaquin River. One angler reports he caught a total of five green sturgeon in this area of the river during the combined 2009 and 2010 report card periods. It is not specifically known how often green sturgeon are snagged in this area using this type of illegal fishing.

By placing a gear restriction on this stretch of river, it will assist in limiting snagging activity as well as help protect both green and white sturgeon that spawn in the area.

Section 7.50(b)(1.5) Alameda Creek

Subsection 7.50(b)(1.5) has a year round closure for all species for Alameda Creek and tributaries downstream of San Antonio, Calaveras and Del Valle reservoirs. The Alameda Creek tributaries upstream of San Antonio, Calaveras, and Del Valle reservoirs are open to catch and release fishing for

trout from the last Saturday in April through November 15 and only artificial lures with barbless hooks may be used.

During the Commission's February 2010 meeting's public forum, an angler requested the Commission allow catch and release fishing for bass and catfish in the ponds in the Arroyo Del Valle adjacent to East Bay Regional Parks District's Shadow Cliffs Recreational Area in Pleasanton. These ponds were closed all year to all fishing effective March 1, 2010 to increase protection for the anadromous steelhead in the lower Alameda Creek watershed. The ponds are separated from the main creek channel by a gravel bar covered with dense bulrush and cattails. The Arroyo Del Valle stream flow could mix with these ponds during high flood events.

These ponds are a fairly popular bass and catfish fishing location and are important recreational fishing access within the greater Shadow Cliffs Recreational Area. At this time, no steelhead or trout are found in these ponds.

The Department believes allowing catch and release fishing in this location is highly unlikely to impact any salmonids.

The Department proposes opening up the portion of the Arroyo Del Valle adjacent the Shadow Cliffs Regional Recreation Area to catch-and-release fishing with artificial lures with barbless hooks only.

Subsection 7.50(b)(1.5) will still have a year round closure for all species for Alameda Creek and tributaries downstream of San Antonio, Calaveras and Del Valle reservoirs with the following exception:

1) Arroyo Del Valle between Bernal Avenue and the Thiessen Street intersection with Vineyard Avenue will remain open all year to catch and release fishing to allow access to the non-salmonids species.

There are no proposed changes for the Alameda Creek tributaries upstream of San Antonio, Calaveras, and Del Valle reservoirs.

Section 27.65 Filleting of Fish on Vessels

Currently subsection 27.65(b)(10), Title 14, CCR states "All other species except those listed in subsection (c) of this section: Each fillet shall bear intact a one inch square patch of skin. The fillets may be of any size."

Subsection 27.65(c), Title 14, CCR states "No person shall fillet on any boat or bring ashore as fillets the following fish: cabezon, greenlings of the genus Hexagrammos, salmon, striped bass, sturgeon, and any species of flatfish except California halibut may be filleted or brought ashore as fillets south of Point Arena (Mendocino County)."

There is currently no specified fillet size limit for Leopard Shark which has a size limit of 36 inches, California Sheephead which has a size limit of 12 inches and Redtail Surfperch which has a size limit of 10½ inches.

Subsection 27.65(b)(10) allows for the filleting of Leopard Shark, CA Sheephead, and Redtail Surfperch on a vessel as long as a one inch skin patch is attached and the fillets may be of any size. The legal overall size limit for these species is unenforceable once filleted on a boat or on shore since there is no legal fillet size specified in regulations.

Wardens in the field are issuing numerous citations to subjects taking undersize leopard sharks in San Francisco Bay. Under current regulations, undersize leopard sharks are being taken illegally and filleted to avoid detection of the undersized fish by Game Wardens. The same problem exists for Sheephead and Redtail Surfperch.

Wardens are expressing frustration over these regulations when they find filleted leopard shark on a vessel and can not determine if the shark was a legal size. Wardens are finding an increasing number of filleted leopard shark on vessels and increasing knowledge by anglers of the loophole in the regulations. Wardens have issued citations to anglers for violation of Fish & Game Code Section 5508 when they find filleted Leopard Shark, Redtail Surfperch and Sheephead. Fish and Game Code section 5508 states it is unlawful to possess on any boat or to bring ashore any fish upon which a size or weight limit is prescribed in such a condition that its size or weight cannot be determined. Unfortunately when a person goes to

court and points out subsections 27.65 (b)(10) and (c), the cases are dismissed due to the loop hole in the regulations.

Anglers are expressing confusion over the regulations as well as some have been issued citations for Section 5508, Fish & Game Code, yet they were following the 27.65 regulations in the Ocean Sport Fishing Regulation handbook.

The Department's legal office has determined that Section 5508, Fish & Game Code and Section 27.65, Title 14, CCR are in conflict and Section 27.65, Title 14, and needs to be amended to protect species with size limits. Wording needs to be added to Section 27.65 stating, unless there is a fillet, chunk, or steak size limit for a fish with an overall size limit, that fish may not be steaked, chunked or filleted aboard a vessel.

Section 29.80 Gear Restrictions

In 2010 this section was changed so there could be a legal definition for a hoopnet. The definition included two types of hoopnets to include the traditional style hoopnet as well as a new style hoopnet on the market that was more rigid where the top ring of the hoopnet sat above the bottom ring supported by solid arms. The regulation specified that no more than four arms could be used to support the upper ring. After the regulation was approved by the Office of Administrative Law, the public started calling and complaining about the hoopnet definition and said that there are two current manufactured hoopnets that specifically have five and six rigid arms that support the top ring of the net.

Further research confirmed there are currently at least three types of hoopnets commercially manufactured that have support arms which support the top ring of the hoopnet. The number of arms used to support the top ring of the hoopnets varies from four to six. These hoopnets are manufactured by Promar and Danielson companies. According to a representative from one of the companies, the added rigid arms make the hoopnet more of a sturdy design and therefore the hoopnet will hold up better in detrimental conditions. The added support arms do not assist in making the hoopnet any more efficient in taking crab or lobster.

Changing the wording in the hoopnet definition to allow the Type B hoopnet to have up to six support arms, will allow the existing manufactured hoopnets on the market to be used by the public without increasing the take efficiency of the currently described hoopnet.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at the Lexington Plaza Waterfront Hotel, Stockton, California, on Thursday, June 30, 2011, at 8:30 a.m., or as soon thereafter as the matter may be heard.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the State of California Resources Agency Building Auditorium, 1416 Ninth Street, Sacramento, California, on Thursday, August 4, 2011, at 8:30 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before July 25, 2011 at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@fgc.ca.gov. Written comments mailed, faxed or e-mailed to the Commission office, must be received before 5:00 p.m. on July 25, 2011. All comments must be received no later than August 4, 2011, at the hearing in Ontario, CA. If you would like copies of any modifications to this proposal, please include your name and mailing address.

The regulations as proposed in strikeout-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Jon K. Fischer, Acting Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to Jon K. Fischer or Jon Snellstrom at the preceding address or phone number. **Scott Barrow, Department of Fish and Game, (916) 445-7600, has been designated to respond to questions on the substance of the proposed regulations.** Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.fgc.ca.gov>.

Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period, and the Commission will exercise its powers under Section 202 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in Sections 11343.4, 11346.4 and 11346.8 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

Impact of Regulatory Action

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businessmen to Compete with Businesses in Other States.

2.10 - The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

7.50(b)(1.5) - The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed changes will offer more fishing opportunities with no adverse economic impacts.

27.65 - The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

29.80 - The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. By changing the support arms from 4 to 6 these regulations will actually make available additional hoop nets that are already produced, but currently not legal to use.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California.

None.

- (c) Cost Impacts on Private Persons.

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State.

None.

- (e) Other Nondiscretionary Costs/Savings to Local Agencies.

None.

- (f) Programs Mandated on Local Agencies or School Districts.

None.

- (g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed under Part 7 (commencing with Section 17500) of Division 4.

None.

- (h) Effect on Housing Costs.

None.

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business. The Commission has drafted the regulations in Plain English pursuant to Government Code sections 11342.580 and 11346.2(a)(1).

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

FISH AND GAME COMMISSION

Dated: May 17, 2011

Jon K. Fischer
Acting Executive Director